

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington
Corporation,

Defendant.

NO. C07-0475 MJP

DECLARATION OF JEFFREY M.
THOMAS IN OPPOSITION TO
MICROSOFT'S MOTION TO STAY
PROCEEDINGS

CLASS ACTION

Noted on Motion Calendar:
March 21, 2008

I, Jeffrey M. Thomas, declare as follows:

1. ***Identity and Competency.*** I am an attorney with the law firm of Gordon Tilden Thomas & Cordell, LLP. Together with Keller Rohrback, LLP, we represent the plaintiffs.

2. ***Opposition to Microsoft's Rule 23(f) Petition.*** Plaintiffs are opposing Microsoft's Petition for Permission to Appeal. Upon the filing of our opposition, we will file a copy in this Court linked to the papers on Microsoft's motion for a stay.

3. ***Third-Party Subpoenas and Response Thereto.*** On or about March 6, 2008, we served a number of subpoenas on OEMs, retailers, and others. Each subpoena was substantially similar. By way of example, attached as Exhibit D is a true and correct copy of the subpoena we served on Office Max. Following service, I have spoken personally with representatives of a

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GORDON TILDEN THOMAS & CORDELL LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154
Phone (206) 467-6477
Fax (206) 467-6292

number of the subpoenaed parties. To date, not a single one has expressed a concern that responding to the subpoenas would somehow “disrupt” their business relationship with Microsoft. Indeed, most representatives have expressed their appreciation in receiving: (a) a carefully prepared subpoena; (b) a longer than typical requested turn-around date; and (c) an invitation to discuss any production issues informally as is set forth in the cover letter.


4. ***Streamlined Merits Discovery/Trial Preparation.*** To date, we have taken one 30(b)(6) deposition and have propounded only six interrogatories. Because prior discovery was limited to matters relevant to class certification, we only have just begun merits discovery. We will endeavor to maintain a streamlined approach to merits discovery in an effort to be ready to try this case in October 2008. We view matters like “driving up litigation costs” as a distraction that would not aid our abilities to be trial-ready in October.

5. ***Authentication of Documents.*** Attached as exhibits are true and correct copies of the following documents:

<u>Exhibit Name</u>	<u>Tab</u>
<i>Seattle P-I</i> Article, “Suit says Microsoft knew it misled: E-mails raised Vista doubts,” dated February 8, 2008	A
Sunday <i>New York Times</i> Article (web version), “They Criticized Vista. And They Should Know,” dated March 9, 2008	B
Printout from Microsoft’s website re: Microsoft document management software	C
Subpoena served on Office Max, with cover letter, dated March 6, 2007	D
Discovery requests served on Microsoft on March 11, 2008 (without exhibits attached)	E
<i>PC World</i> Article reprinted in Washington Post (web version), “Microsoft submits Windows 7 for US antitrust review,” dated March 12, 2008	F

1 **I declare under penalty of perjury that the foregoing is true and correct.**
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3 Executed this 17th day of March, 2008, at Seattle, Washington.
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Jeffrey M. Thomas

CERTIFICATE OF SERVICE

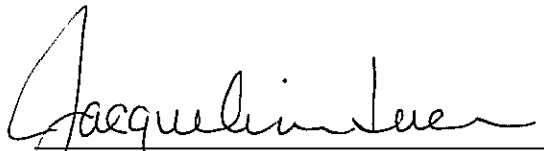
I hereby certify that on March 17, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following.

Counsel for Defendant Microsoft Corporation

Stephen M. Rummage, WSBA #11168
Cassandra L. Kinkead, WSBA #22845
Charles S. Wright, WSBA #31940
Davis Wright Tremaine LLP
1201 Third Avenue Suite 2200
Seattle, Washington 98101-3045
steverummage@dwt.com
cassandrakinkead@dwt.com
charleswright@dwt.com

Counsel for Defendant Microsoft Corporation
- Admitted Pro Hac Vice

Charles B. Casper
Montgomery, McCracken, Walker & Rhoads
123 South Broad Street
Philadelphia, PA 19109
ccasper@mmwr.com



Jacqueline Lucien, Legal Secretary
Gordon Tilden Thomas & Cordell LLP
1001 Fourth Avenue, Suite 4000
Seattle, WA 98154-1007
Telephone: (206) 467-6477
Facsimile: (206) 467-6292
Email: jlucien@gordontilden.com